

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

ABBOTT LABORATORIES, INC., *et al.*,

Defendants.

Case No. 04-CV-1709

**DEFENDANT BAXTER HEALTHCARE CORPORATION'S RESPONSES TO
PLAINTIFF STATE OF WISCONSIN'S
WRITTEN DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

Pursuant to the Wisconsin Rules of Civil Procedure (the "Wisconsin Rules"), Defendant Baxter Healthcare Corporation (hereinafter, "Baxter"), hereby objects and responds to the State of Wisconsin's Written Discovery Request No. 3 (the "Requests").

I. PRELIMINARY STATEMENT

Preliminarily, Baxter states as follows:

1. By responding to the Requests, Baxter does not waive or intend to waive:
(a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced in response to the Requests; (b) the right on any ground to the use of documents or information produced in response to the Requests at any hearing, trial, or other point during the litigation; (c) the right to object on any ground at any time to a demand for further response to the Requests; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

2. Baxter's responses to the Requests contain information subject to the Final Protective Order entered on November 29, 2005 in this matter and must be treated accordingly.

3. By responding that it will produce documents or information responsive to a particular request, Baxter asserts only that it will conduct a reasonable search and produce relevant, responsive, non-objectionable, non-privileged documents or information and not that it has such documents or information or that such documents or information exist. No objection made herein, or lack thereof, is an admission by Baxter as to the existence or non-existence of any documents or information.

4. The responses made herein are based on Baxter's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist.

5. Baxter reserves the right to amend or supplement these objections and responses, as necessary, with additional information or documents that may become available or come to its attention, and to rely upon such information or documents in any hearing, trial, or other proceeding in this litigation consistent with said negotiations and in accordance with the applicable rules and Court orders.

II. GENERAL OBJECTIONS

Baxter expressly incorporates all of the General Objections set forth below into the specific objections for each Request. Any specific objections provided below are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

A. GENERAL OBJECTIONS TO WISCONSIN'S WRITTEN DISCOVERY REQUESTS

1. Baxter objects to the Requests to the extent that they seek documents or information outside the knowledge, possession, custody, or control of Baxter, its agents or employees, or that are more appropriately sought from third parties to whom requests have been or may be directed.

2. Baxter objects to the Requests to the extent that they seek documents or information that Baxter obtained from third parties and cannot disclose without prior approval of the third-parties.

3. Baxter objects to the Requests to the extent that they demand production of any document or information covered by the attorney-client privilege, work product doctrine, joint defense/prosecution privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents are inadvertently produced in response to these requests, the disclosure of such documents shall not constitute a waiver of Baxter's right to assert the applicability of any privilege or immunity to the documents, and any such documents shall be returned to Baxter's counsel immediately upon discovery thereof.

4. Baxter objects to the Requests to the extent that they call for the production of documents or information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. Baxter will not make such documents or information available for inspection or production. Baxter further objects to the Requests on the grounds that they are overly broad, unduly burdensome, vague, ambiguous, oppressive, and/or duplicative. Upon determination by agreement of the parties or otherwise as to the appropriate scope and interpretation of the Requests, Baxter will amend or supplement these responses, if necessary.

5. Baxter objects to the Requests to the extent that they purport to require production of documents or seek information relating to a period of time outside of any applicable statute of limitations.

6. Baxter objects to the Requests to the extent they seek documents relating to Baxter's activities other than those that concern the State of Wisconsin on the grounds that such documents are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

7. Baxter objects to producing documents that are already in the possession, custody, or control of the State of Wisconsin or its agencies or attorneys, or that have already been made available to the State of Wisconsin or its agencies or attorneys.

8. Baxter objects to the Requests to the extent that Plaintiff seeks information not contained in documents that currently exist at Baxter and requires Baxter to create, compile, or develop new documents.

9. Baxter objects to the Requests to the extent that they call for the production of publicly available documents.

10. Baxter objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Requests. Any response by Baxter is not intended to indicate that Baxter agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

11. Baxter objects to the Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law, including, but not limited to, the Wisconsin Rules of Civil Procedure. Baxter responds to the Requests, subject to other objections, as required by applicable law.

12. Baxter hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent

such objection or reservation of rights is not inconsistent with Baxter's position in this litigation.

B. GENERAL OBJECTIONS TO THE PLAINTIFF'S DEFINITIONS AND INSTRUCTIONS

1. Baxter objects to the Plaintiff's "Definition" and "Instructions" to the extent they expand upon or alter Baxter's obligations under the Wisconsin Rules of Civil Procedure.

2. Baxter objects to the definitions of "you," "your," and "your company," as set forth in Definition No. 1, to the extent they purport to imply any control by Baxter over any other entity and seek to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules. These definitions are overly broad, unduly burdensome, and vague because they seek the production of information not in the control or custody of Baxter, require Baxter to search the files of third-parties, and require Baxter to speculate concerning the identities of individuals and business entities included in these definitions.

3. Baxter objects to the definitions of "document" or "documents," as set forth in Definition No. 2, to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules. Baxter will comply with the Wisconsin Rules. Baxter further objects to this Definition insofar as it calls for Baxter to search for information that was not generated in the form of written or printed records, or to create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive. Baxter also objects to this Definition to the extent it requires or seeks to require Baxter to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data,

fields, records, or reports about produced documents or data; (d) produce documents or data on any particular medium; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate any licensing agreement or copyright laws.

III. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENTS REQUESTS

Subject to the General Objections and Preliminary Statement, and without waiving and expressly preserving all such objections, which are hereby incorporated into the responses to each Request, Baxter responds to Plaintiff's individually numbered Document Requests as follows:

DOCUMENT REQUEST NO. 7: All documents listed in Appendix A attached hereto in unredacted form. Each of these documents is identified in the Third Amended Master Consolidated Class Action Complaint Amended to Comply With the Court's Class Certification Order on the page listed in Appendix A and with the bates number identified in Appendix A. (Those without bates numbers are otherwise identified, *e.g.*, paragraph 290.)

RESPONSE TO DOCUMENT REQUEST NO. 7:

The documents identified as BAX MDL 0011378, BAX MDL 0004754, BAX MDL 0012778, BAX MDL 0004210, BAX MDL 0012778, BAX MDL 0003428-46, and BAX MDL 0003421-26, were previously produced in unredacted form to Plaintiff on October 4, 2005. The chart below identifies the Wisconsin Bates numbers corresponding to these documents:

<u>BAX MDL #</u>	<u>WI #</u>
11378	8059
4754	3282
12778	9459
4210	3086
12778	9459 (You have asked for this document twice.)
3428-46	2906-2924
3421-26	2899-2904

BAX MDL 005366 was not previously produced as it did not respond to any of your prior discovery requests. It is being produced herewith.¹

The documents identified as AB-00-86, P006299-006316, and P0075410-44 are documents produced by the MDL plaintiffs/and or third-parties in connection with the AWP MDL. All three are in the public domain (for example, the first is a U.S. Department of Health and Human Services Report) and are more easily obtainable from other sources than from Baxter . Baxter therefore objects to this portion of the Request.

DOCUMENT REQUEST NO. 8: Documents discussing or concerning the policy and practice of each defendant concerning the disclosures providers and pharmacy benefit managers may make of the drug price information they receive from the defendant or drug wholesalers from 1993 to the present.

RESPONSE TO DOCUMENT REQUEST NO. 8:

Baxter objects to Document Request No. 8 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request on the grounds that it is vague and ambiguous with respect to the language “pharmacy benefit managers,” “drug price information,” and “drug wholesalers.” Baxter also objects on the grounds that this Request seeks documents and information that may be protected by the attorney-client, work product, or another applicable privilege and/or that are not within the control of Baxter, or are more easily obtainable from other sources.

Subject to and without waiving any of these objections or the General Objections, Baxter responds as follows: To date, Baxter is not aware of any uniform “policy and practice” of Baxter concerning “the disclosures providers and pharmacy benefit managers may make of the drug pricing information they receive from Baxter.”

¹ For ease of reference, we are no longer using Wisconsin-specific Bates numbers where the documents we are providing were previously produced in the AWP MDL. Documents produced to Wisconsin only will continue to have Wisconsin-specific Bates.

To the extent any such information is discovered in the course of our search for documents, we will produce non-privileged, responsive documents with the requested information. *See also* Response to Document Request No. 9.

DOCUMENT REQUEST NO. 9: Exemplar agreements between each defendant and providers and pharmacy benefit managers applying defendants' policies and practices relating to the disclosures such entities may make of the drug price information they receive from defendant or wholesalers.

RESPONSE TO DOCUMENT REQUEST NO. 9:

Baxter objects to Document Request No. 9 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request on the grounds that it is vague and ambiguous with respect to the language "exemplar agreements," "pharmacy benefit manager," "drug price information," and "wholesalers." Baxter further objects on the grounds that this Request may seek documents and information that may be protected by the attorney-client, work product, or another applicable privilege and/or that are not within the control of Baxter, are in the public domain, or are more easily obtainable from other sources. Baxter further objects on the grounds that this Request seeks documents outside of the applicable time frame and statute of limitations.

Subject to and without waiving any of these objections or the General Objections, Baxter is producing herewith BioScience division template contracts for various periods of time, which contracts contain industry-standard confidentiality language.

DOCUMENT REQUEST NO. 10: Any sworn statement or deposition of any current or former employee or agent relating to any claim or investigation about or connected with: a) whether the defendant's published Average Wholesale Price (AWP) was or is inaccurate, or b) whether the defendant's published Wholesale Acquisition Cost (WAC) was or is inaccurate, or c) whether the defendant misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official, or

d) whether the defendant's agents furnished free samples to providers for improper reasons.

RESPONSE TO DOCUMENT REQUEST NO. 10:

Baxter objects to Document Request No. 10 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request on the grounds that it is harassing, calls for legal conclusions and mischaracterizes facts not in evidence. Baxter also objects to this Request on the grounds that it is vague and ambiguous with respect to the language "claim," "investigation," "inaccurate," "misrepresented," and "improper." Subject to and without waiving any of these objections or the General Objections, Baxter will conduct a reasonable search and will produce non-privileged, responsive documents believed to be sufficient to provide the requested information.

Subject to and without waiving any of these objections or the General Objections, Baxter is producing herewith copies of three (3) Examinations Under Oath taken in connection with a State of Texas investigation. Baxter will also produce copies of the five (5) Rule 30(b)(6) depositions that have been taken to date in the AWP MDL, and those yet to be taken in the MDL or other AWP cases, subject to the protective order restrictions in those cases and any applicable court reporter licensing restrictions.

Dated this ^{4th} 6 day of January, 2006.

Respectfully submitted,



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